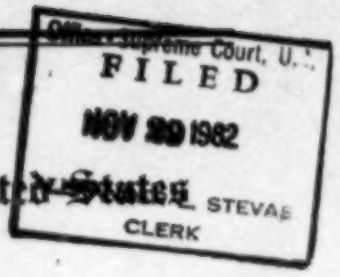
No. 82-740



IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SHEARN MOODY, JR.,

Petitioner,

—v.—

STATE OF ALABAMA ex rel. THARPE FORRESSTER, COMMISSIONER OF INSURANCE OF THE STATE OF ALABAMA,

—and—

PROTECTIVE LIFE INSURANCE CO.,

Respondents.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION AND THE TEXAS CIVIL LIBERTIES UNION FOR LEAVE TO FILE AND BRIEF *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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November 24, 1982

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

SHEARN MOODY, JR.,
Petitioner,

v.

STATE OF ALABAMA EX. REL.
THARPE FORRESSTER, COMMISSIONER OF
INSURANCE OF THE STATE OF ALABAMA

and

PROTECTIVE LIFE INSURANCE CO.,
Respondents.

MOTION FOR LEAVE TO FILE
BRIEF AMICI CURIAE

The American Civil Liberties Union is a nationwide organization of over 250,000 persons dedicated to the preservation and enforcement of constitutional rights. The Texas Civil Liberties Union is one of its state affiliates. Together, they respectfully move for leave to file attached brief amici curiae in support of the petition for

certiorari. Petitioner, but not respondents, has consented to the filing of this brief.

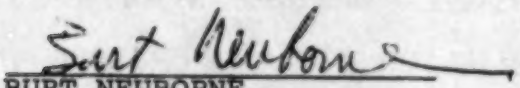
The principal mechanism which our system has evolved to enforce constitutional limitations on government behavior is a complaint by a private litigant to an independent judge that government officials have acted in excess of their delineated authority. The decision of the Supreme Court of Alabama below threatens that mechanism by authorizing government officials to enjoin private citizens from seeking judicial relief against allegedly unlawful government activity. While amici lack both the knowledge and expertise to evaluate petitioner's claims on the merits, his ability to present them to an appropriate judge

for appropriate disposition lies at the heart of our system of constitutional government.

Amici recognize that briefs amici curiae in support of petitions for cetiorari are not favored by this Court, and we have accordingly adopted a policy against filing such briefs except in narrow circumstances. However, the potential significance of Alabama's refusal to permit a Texas resident to assert an in personam damage claim against government defendants in an appropriate Federal Court for that court's independent evaluation raises issues of sufficient systemic significance to warrant a departure from that general policy, and the filing of

the attached brief amici curiae.

Respectfully submitted,



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INTEREST OF AMICI CURIAE

The interest of Amici Curiae is set out in the foregoing motion.

STATEMENT OF THE CASE

This petition arises out of a 1972 decision by Alabama's insurance officials to place a life insurance company owned by petitioner into receivership and, ultimately, into liquidation. Petitioner claims that, instead of appropriate regulation, the actions of the Alabama officials were part of an elaborate conspiracy to steal his company and to punish him financially for his political activities. If true, petitioner's allegations state claims for both statutory and constitutional relief.

When petitioner initially sought to raise his claims in federal court,

he was met with an Alabama injunction, issued at the behest of the potential defendants, which precluded petitioner from challenging the receivership and liquidation in any forum except the Circuit Court of Jefferson County Alabama. During the active pendency of the receivership proceedings, the injunction was arguably authorized by an expansive reading of Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456 (1939), which permits state court injunction necessary to preserve in rem jurisdiction over a specific res. 1/ With the virtual completion of

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1/ Petitioner's earlier unsuccessful attempts to obtain leave to raise his claims are reported at Moody v. State ex rel. Payne, 355 So. 2d 1116 (Ala.), cert. denied, 439 U.S. 910 (1968); Moody v. State ex rel. Payne, 351 So.2d 552 (Ala. 1977), cert. denied, 435 U.S. 964 (1978); State ex rel. Payne v.

(Continued on next page)

the receivership and liquidation proceedings, however, the Princess Lida exception no longer even arguably justifies the issuance of state injunctive relief barring petitioner from the federal courts. The Alabama courts below, however, declined to permit petitioner to present his damage claims to an appropriate federal court because, in the view of the Alabama courts, his claims are "inextricably connected" with the completed receivership proceeding. Thus, the Alabama injunction has progressed from an arguably appropriate device to assure the orderly administration of an insurance

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Empire Life Insurance Company, 351 So. 2d 538 (Ala. 1977), cert. denied, 435 U.S. 969 (1978); Moody v. State ex rel. Payne, 329 So.2d 73 (Ala. 1976). See also Sumrall v. Moody, 620 F.2d 548 (5th Cir. 1980), on reh. 632 F.2d 1351 (5th Cir. 1980), cert denied sub nom. Moody v. Forresster, 450 U.S. 1026 (1981)

receivership proceeding to an attempt by the Alabama courts to prevent the relitigation of *in personam* claims which Alabama asserts were determined adversely to petitioner during the *in rem* receivership proceedings.[2/] The precise *res judicta* effect of the *in rem* Alabama receivership proceeding is an issue of no small difficulty. It would, however, constitute a

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2/ The order and decree of the Circuit Court of Jefferson County which declined to permit petitioner to commence a federal action, stated in part:

> "Contrary to the allegations by Moody set forth in the proposed complaint that he now seeks to file, this Court has previously and finally adjudicated that Moody's claims of conspiracy and wrongful actions by Protective and the original receiver have no merit." Appendix B2, to the Petition for Writ of Centiorari.

radical departure from generally accepted rules of federalism and judicial administration to permit Alabama to dictate the res judicata effect of its own judgments by the drastic expedient of enjoining the filing of subsequent litigation in federal court.

Reasons for Granting the Writ

FUNDAMENTAL PRINCIPLES OF FEDERALISM AND JUDICIAL ADMINISTRATION PRECLUDE A STATE COURT FROM UNILATERALLY SEEKING TO DETERMINE THE RES JUDICATA EFFECT OF ITS OWN JUDGMENT BY ENJOINING RELATED LITIGATION IN FEDERAL COURT.

This Court has consistently recognized that fundamental principles of federalism and orderly judicial administration preclude a state or federal court from seeking to define unilaterally the res judicata effect of its own judgments by enjoining the prosecution of future litigation.

For example, in Kline v. Burke Const. Co., 260 U.S. 226 (1922), this Court ruled that the res judicata effect of a federal judgment on a subsequent state proceeding was to be determined by the state court "as it would determine any other question of fact or law," 260 U.S. at 230, and not by a pre-emptive federal injunction against relitigation. Similarly in Toucey v. New York Life Insurance Co., 314 U.S. 118 (1941), this Court rejected the suggestion that a federal court may enjoin a state court from considering issues which the federal court deems to have been settled in a prior federal action. See also Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281 (1970); Vendo Co. v. Lektro-Vend

Corp., 433 U.S. 623 (1977).[3/]

Conversely, in Donovan v. City of Dallas, 377 U.S. 408 (1964), this Court ruled that a state court lacked power to enjoin a subsequent federal action merely because the state court believed that the issue had been definitively settled in the state courts. As this Court noted in Donovan:

> It may be that a full hearing in an appropriate court would justify a finding that the

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3/ The 1948 Amendments to 28 U.S.C. § 2283 (the Anti-Injunction Act) authorize a federal court to issue an injunction "where necessary in aid of its jurisdiction, or to protect or effectuate its judgment." The Revisers Notes indicate that the purpose of the amendment was to modify Mitchum v. Foster, 407 U.S. 225. But even if the 1948 Amendments overrule Kline and Toucey no similar statutory authority exists which would justify a state court injunction against a federal proceeding. See General Atomic Co. v. Felter, 434 U.S. 12, 19-21 (1977) (Rehnquist, J. dissenting).

> state-court judgment in favor of Dallas in the first suit barred the issues raised in the second suit, a question as to which we express no opinion. But plaintiffs in the second suit chose to file that case in the federal court. They had a right to do this, a right which is theirs by reason of congressional policy. And whether or not a plea of res judicata would be good is a question for the federal court to decide. 377 U.S. at 412-13.

Similarly, in General Atomic Co. v. Felter, 434 U.S. 12 (1977), this Court applied Donovan to bar summarily the New Mexico courts from enjoining the prosecution of future federal actions deemed duplicative and vexations by the New Mexico judiciary.

With the virtual completion of receivership and liquidation proceedings in the Alabama courts, the continued enforcement of a ban on litigation seeking damages for an alleged

conspiracy to steal petitioner's insurance company is nothing more than an attempt by Alabama to enforce the res judicata effects of its judgment by pre-emptive injunction in direct contravention of General Atomic, Donovan, Toucey and Kline.

Nor does the continued technical pendency of the Alabama receivership proceeding justify an injunction against the federal action. While state and federal courts may -- and should -- seek to avoid the simultaneous consideration of similar issues through techniques such as comity and abstention, see, eg. Younger v. Harris, 401 U.S. 37 (1971); R.R. Com'n of Texas v. Pullman, 312 U.S. 496 (1941); Colorado River Water Conserv. Dist. v. United States, 424 U.S. 800 (1976),

neither court system should seek to preserve its jurisdiction by enjoining the prosecution of simultaneous actions in the other. For the essence of the abstention doctrine is a decision by Court B not to intrude on Court A, not an injunction by Court A barring Court B from doing so. Thus, in Mandeville v. Canterbury, 318 U.S. 47 (1943), for example, a plaintiff sued in federal court to determine rights in a trust. While the federal claim was pending, the trustees sued in state court to quiet title to the trust assets. This Court ruled that the federal court lacked power to enjoin the state proceedings.[7/] Conversely, in Markham v.

7/ It is unclear whether this Court's decision in Mandeville has been affected by the "in aid of jurisdiction" language added to 28 U.S.C. § 2283 in 1948. Of course, when a federal court injunction of state judicial proceedings is necessary to enforce federal constitutional rights, no doubt exists as to the fed-

(footnote continued on following page)

Allen, 326 U.S. 490 (1946), this Court ruled that the pendency of a probate action in the California courts did not preclude a subsequent action in federal court by the Alien Property Administrator seeking the assets in question. Accordingly, while the technical pendency of receivership proceedings in Alabama might well induce a federal court to abstain under Younger or Pullman, that decision may not be pre-empted by a state injunction against the filing of a federal complaint.

Of course, where any court -- state or federal -- is engaged in the resolution of disputes concerning the ownership of specified property within its jurisdiction, concern for orderly judicial administration argues strongly that

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(footnote continued from preceding page)
eral court's power. Ex parte Young, 200 U.S. 123 (1908). Compare Tarble's Case, 13 Wall 397, 20 L.Ed. 597 (U.S. 1872).

the court be permitted to carry out its functions free from the distraction of simultaneous litigation affecting the res. E.g., Hagans v. Lucas, 10 Pet. 400 (U.S. 1836); Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456 (1939). Such a concern is particularly important in the context of judicial proceedings designed to marshall and distribute the assets of a threatened entity. Thus, as early as the Bankruptcy Act of 1867, bankruptcy courts were empowered to enjoin state proceedings affecting the bankrupt's assets. 14 Stat. 526. Accordingly, amici had no quarrel with the Alabama injunction insofar as it permitted the orderly marshalling and distribution of the assets in question. However, with the completion of the distribution of the assets in question, no functional justification exists for continuation of the injunction against

related litigation in federal court.[8] The mere fact that the Alabama proceedings were in rem cannot establish a mystical bar to the very assertion of petitioner's claim that the Alabama proceedings were procured by fraud and constituted a perversion of the legal process.[9] Cf. Shaffer v. Heitner, 433 U.S. 186 (1977).

8/ "After Donovan, a state court may enjoin the continued prosecution of a federal proceeding only when it has custody of property in in rem a quasi in rem proceedings, and the injunction is needed to protect the property." Bator, Shapiro, Mishkin and Wechsler, Hart & Wechsler's The Federal Courts and the Federal System, 2nd ed. at 1238 (emphasis added).

9/ As in Donovan it is possible that an appropriate federal court will hold petitioner's claim barred by res judicata. Cf. Allen v. McCurry, 449 U.S. 90 (1981).

CONCLUSION

For the above-stated reasons, amici respectfully suggest that this Court follow the practice established in General Atomic Co. v. Felter 434 U.S. 12 (1977), and summarily reverse the decision of the Supreme Court of Alabama, thus permitting an appropriate United States District Court, and not the Supreme Court of Alabama, to determine whether petitioner's federal claims are barred by res judicata on comity.

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